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*Concept note for BREAK-OUT SESSION 2: Cooperation with the Court:  
modalities, cooperation with investigations, arrest and surrender,  
freezing of assets – 5 April 2017*

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The purpose of this workshop is to discuss **concrete operational issues and challenges arising within the context of cooperation of States with the International Criminal Court** (“the Court”) as well as measures that can be taken to streamline and expedite cooperation.

While the Rome Statute contains a general obligation on States Parties to cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court, the **modalities of cooperation** (channels of communication, central authority, etc) are to be determined by the State and a level of flexibility exists, within the limits of Part 9 of the Statute.

It is essential that the cooperation and judicial assistance provided by States Parties to the different organs of the Court on the basis of Part 9 of the Statute is **timely and effective**, allowing the Court’s prosecutorial and judicial activities to proceed without obstacles.

In the conduct of its activities, the Court as a whole, and its different organs, **depend heavily on cooperation and judicial assistance** provided by States Parties:

- In terms of judicial assistance, for the OTP to be able to **conduct investigative activities** (meeting with persons of interest, witnesses, gathering of information) on the territory of a State Party;
- Help with the **identification, freezing and seizing of assets** that can potentially help to prove linkage between suspects and crimes, as well as contribute to victims reparations of the accused are found guilty, and contribute to the legal aid scheme (for this purpose, participants are advised to read this Concept Note in conjunction with the 2016 Report on cooperation challenges faced by the Court with respect to financial investigations, which is annexed to this Note);
- States and the OTP **exchange relevant information** regarding a specific situation, specific crimes or specific individuals, at different stages of OTP activities;
- Provide **logistical, operational and security support** for Court missions in the field, including secure housing, transport, communications, physical and medical security, as well as "expert" support in areas such as forensics or satellite information;
- Comply fully and in a timely manner with requests for cooperation issued by the ICC Judges; including in particular warrants for the **arrest and surrender of individuals** sought by the Court;
- Help with the **protection of victims and witnesses**;



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- Ensure the **Defence teams** receive the necessary levels of cooperation during their investigations including issuing visas, facilitating entry to detention centres and meetings with relevant authorities as well as provision of documents.

Additionally, and based on its own experience but also the experience of the ad hoc tribunals, the ICC has identified several factors that contribute to making these **cooperation “pre-conditions”** effective and efficient. They are flexible, and of course correspond to a final decision taken by each State, but are nonetheless important to strengthen the regime of cooperation under the Rome Statute and to ensure the success of the Rome Statute system. These include, inter alia:

- **Identification of channels of communication, focal points and national mechanisms of judicial assistance** (article 87 of the Rome Statute, recommendations 7 and 8 of the 66 recommendations) – The availability of channels of communication and simplified domestic procedures for dealing with Court cooperation requests, as well as coordination between national authorities dealing with ICC cooperation requests, are of great importance for the Court, and have also been reaffirmed as a constructive step on several occasions by the Assembly of States Parties. Indeed, such national mechanisms allow the organs of the Court to interact with the person or persons that have the knowledge and the experience regarding judicial cooperation requests, facilitating exchanges and mainstreaming issues within and across government institutions consultations, and also enable the Court’s organs to have its requests answered in an expeditious and effective manner. It is important to note here that when mentioning “focal points”, the Court is not referring to a person, but rather to the existence of a structure or mechanism that will remain in place and effective, even when specific individuals leave their function as ICC focal points.
- **Bilateral cooperation agreements** – The terms and procedures for the transmission of requests may be specified in bilateral judicial cooperation agreements concluded with States by the Court or, in some cases, by the Prosecutor (pursuant to Article 54(3)(d)). Such agreements allow the Court and States to agree on simplified procedures for cooperation, and have been concluded with some high frequency cooperation States, as well as States in whose situations the Office is investigating.
- **Focused requests for assistance** – The organs of the Court will on their part endeavor to submit tailored and focused requests, to meet expectations of States and their (legal) requirements. In past practice, the Court has developed and refined the format, content and consultations process regarding its cooperation requests, in particular thanks to the input received from States and their focal points. As a matter of practice, and on the basis of article 96, the Court will consult, if and when appropriate, with national authorities prior to the submission of a request, to ensure requests and the information contained therein are sufficiently clear and adequate, and also include particular requirements foreseen in the national law, as long as this is not contradictory to the provisions of the Rome Statute. This practice, which is facilitated by



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proactive information and feedback from the States, will help avoid delays and the need for submission of successive requests.

***Suggested preparations ahead of break-out session 2 discussions:***

- Prepare to discuss **national and regional experiences, practices and challenges** in the area of judicial assistance and cooperation, including:
  - the existence of **focal points** and/or **national centralized mechanisms** for cooperation with the ICC;
  - **procedures** applied to international requests for judicial assistance;
  - the **domestic legal framework** and the **national capacity** to deal with specific international cooperation requests, including regarding the identification, seizing and freezing of assets (ability to assist regarding legal aid matters; national threshold for the freezing of assets, etc)
  - the national experience regarding the execution of international orders for the **arrest and surrenders** of individuals, and
  - the existing / foreseeable challenges.